IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE A.GOPAL REDDY

WRIT PETITION NO : 26969 of 1999

Between:

Modaliyar Raju, @ Nimmagadda Prasad,

S/o Tangamuthu, aged about 40 years, resident

of Kundavari Kandriga, Prayakarao pet,

Vijayawada, Krishna District.

..... PETITIONER

AND

1. The Government of Andhra Pradesh,

represented by its Secretary, Home Department,

Secretariat, Hyderabad.

2. The Superintendent of Police, West Godavari

District, Eluru.

3. Abdul Redhman, Eluru Rural Police Station,

Eluru, West Godavari District.

4. Md. Bazoor Zama, Sub. Inspector of Police,

Eluru II Town Police Station,

Eluru, West Godavari District.

5. A.V.R.P.B. Prasad, Sub. Inspector of Police,

Kovvur, West Godavari District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly in the nature of writ of Mandamus declaring the detention, arrest and remand of Petitioner from, "18.9.1999 to 8.10.1999 in Crime No.86 of 1999 on the file of Kovvur Rural Police Station, West Godavari District" and "13.12.1999 to 18.12.1999 in Crime No.229 of 1999 on the file of Eluru II Town Police, C.C.S. Station, West Godavari District" as arbitrary, illegal, in violation of Article-21 of the Constitution of India and without power of jurisdiction and to issue a consequential direction to the Respondents to pay an amount of Rs.2,00,000/- to the petitioner jointly and severally towards damages for his illegal detention.

Counsel for the Petitioner: MR.SUBBA RAO KORRAPATI

Counsel for the Respondents: G.P. for HOME.

R-1 to R-5

The Court made the following:

O R D E R:

This writ petition is filed by the petitioner seeking to declare the detention, arrest and remand of the petitioner from "18-9-1999 to 8-10-1999 in Crime No.86 of 1999 on the file of Kovvur Rural Police Station, West Godavari District" and "from 13-12-1999 to 8-12-1999 in Crime No.229 of 1999 on the file of Eluru II Town Police C.C.S. Station, West Godavari District", as arbitrary, illegal, violative of Article 21 of the Constitution of India and without power or jurisdiction and for a consequential direction to the respondents to pay an amount of Rs.2,00,000/- (Rupees two lakhs only) to the petitioner jointly and severally towards damages for his illegal detention.

It is averred by the petitioner in the affidavit that on 18-9-1999 at about 10.00 a.m. the Inspector of Police, Eluru Rural Police Station, and Sub-Inspector of Police, II Town Police Station, Eluru (respondents 3 and 4) and their subordinates along with constables of local police station came to the house of the petitioner and took him

away from his house, and detained the petitioner in Eluru II Town C.C.S. Police Station illegally. When they tried to kill the petitioner, his wife filed W.P.No.19989 of 1999 in this court to issue a writ of Habeas Corpus to produce the petitioner before the court.

On 24-9-1999 this court directed the learned Additional Advocate General to get instructions in the matter. After receipt of the notice, on 24-9-1999, the 3rd and 4th respondents with the help of 5th respondent i.e. Inspector of Police, Kovvur, West Godavari District, registered Crime No.86 of 1999 against the petitioner on 25-9-1999 on the file of Kovvur Police Station, West Godavari District under Sections 41 and 102 of the Code of Criminal Procedure, arrested the petitioner and produced before the Judicial Magistrate of First class, Kovvur by submitting Remand Report. Thereafter, on 27-9-1999, the petitioner was remanded to judicial custody for a period of 14 days. Later on, the writ petition, which was filed by the wife of the petitioner, was closed since the petitioner was in judicial remand from 25-9-1999 to 8-10-1999.

It is further averred that basing on the P.T. warrant issued by the Judicial Magistrate of First Class, Kovvur, the petitioner was produced before the II Additional Judicial Magistrate of First Class, Eluru in Cr.No.229/1999 on the file of II Town Police Station, Eluru and he was sent for judicial remand on 4-10-1999. Thereafter, the petitioner moved a bail application on 15-10-1999 vide Crl.M.P.No.5481 of 1999 before the II Additional Judicial Magistrate of First Class, Eluru in Crime No.229 of 1999 and on the same day the petitioner was released on bail on compliance of bail bonds.

Subsequently, on 13.12.1999, again he was arrested by the Eluru II Town C.C.S. Police Station in the very same Crime No.229 of 1999 and produced before the II Additional Judicial Magistrate of First Class, Eluru by submitting Remand Report on 14-12-1999 and on the same day the petitioner was sent to judicial custody, even though the petitioner reported to the Magistrate that he had already been released on bail on 23-11-1999 in the same crime. But, subsequently on 16-12-1999, the

petitioner filed another bail application (Vide Crl.M.P. No.6471 of 1999) in Crime No.229 of 1999 before the II Additional Judicial Magistrate of First Class, Eluru and obtained bail on 17-12-1999 and was released on 18-12-1999.

Learned counsel for the petitioner submits that the petitioner was taken away from the house on 18-9-1999, but only after filing of the Habeas Corpus writ, a crime was registered in Crime No.86 of 1999 on 25-9-1999 and he was produced before the Magistrate and sent the petitioner for judicial remand. When the petitioner obtained bail and released in Crime No.229 of 1999, again obtaining an order for judicial remand by the police is nothing but an abuse of process and amounts to illegal detention and is in violation of Article-21 of the Constitution of India.

The very fact the petitioner was produced before the Magistrate and remanded to judicial custody on 25.9.1999 and later remanded to judicial custody on 27-9-1999 and petitioner not reported to the Magistrate that he was illegally detained on 18-9-1999 and produced before him after one week clearly demonstrate that the allegations are made only to take undue advantage for claiming damages. Similarly, when the petitioner was arrested in Cr.No.229/1999 and obtained order for judicial remand clearly disclose that he was detained pursuant to the order of the competent court.

In view of the same, I do not see any merit in the submission made by the learned counsel for the petitioner for maintaining the writ petition and it is accordingly dismissed. No costs.

30th June, 2004

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The Government of Andhra Pradesh,
represented by its Secretary, Home Department,
Secretariat, Hyderabad.

2. The Superintendent of Police, West Godavari
District, Eluru.

3. Two CCs to G.P. for Home, High Court Buildings,
Hyderabad (OUT),

4. Two CD copies